



MADBURY PLANNING BOARD

13 Town Hall Road, Madbury NH 03823

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Approved

OFFICIAL BUSINESS

Minutes of: March 16th, 2022

Meeting Convened: 7:00 pm

Members in Attendance:

Marcia Goodnow – Vice Chair

Mark Avery – ex officio

Tom Burbank

Michael Card

Doug Hoff

Casey Jordan

Bevie Ketel

Support Staff:

Elizabeth Durfee - Contract Planner

Eric Fiegenbaum – Town Administrator

1. Seating of Alternatives

Bevie Ketel was seated.

2. Election of Officers

The Board moved the election of officers to the end of the meeting.

3. Approval of Minutes

The minutes from 02/16/2022 were reviewed. **Motion** made by Member Jordan to accept the minutes as amended. **Seconded** by Member Burbank. **All Aye. Motion approved.**

4. Correspondence

None

5. Public Hearing - Scenic Road Tree Cutting (Cherry Lane and Nute Rd.)

- Robert Berner of Eversource

Vice Chair Goodnow read the public notice for the public hearing followed by the rules for the hearing.

Robert Berner of Eversource presented the plan to take out trees and brush along Cherry Lane and Nute Road. They will be focusing on dead or dying trees close to power lines. The work is planned to begin in 2 weeks if the board approves the cutting. Mr. Berner noted that all abutters would be contacted and notified 45 days before cutting.

Member Burbank asked what the acronym EAB on the list of trees to be cut referred to? Mr. Berner informed the board that he was speaking about Emerald Ash Borer. Member Jordan asked if the abutters are notified at 45 days, are all the abutters noticed as of today? Mr. Berner said that the mailed notices are for trimming, but not for tree cutting. He is waiting for our approval and they will notify owners as soon as this is approved. Vice Chair Goodnow asked if the trees were marked. Mr. Berner said the trees are marked.

Madbury Road Agent Joseph Moriarty noted that this is a major undertaking that Eversource will be conducting. This coordinated effort with Eversource will help the Nute Road paving project that the town is undertaking. Mr. Moriarty felt that the past work performed by Eversource had been professionally done. He noted that they will give the lumber right of first refusal to the applicable property owners.

Vice Chair Goodnow then opened the hearing to public comment.

Justin Corrow noted that there are many trees dead or dying that need to be removed.

Charles Goss noted that he has seen 2 ash trees marked for removal on his property and both of those trees look healthy. He added that the last time Eversource removed trees, the privacy was greatly decreased. Mr. Brener noted that they will be happy to speak to Mr. Goss and that the landowner ultimately has the final say. Mr. Goss was satisfied with that answer.

Vice Chair Goodnow then closed the public comment period.

Member Avery noted that in the past logs were left on top of stone walls. Mr. Brener said that a log truck will survey and remove logs every 3 days.

Motion made by Member Avery to approve the tree cutting with the understanding that the applicant will meet with the Goss family to discuss the trees they are concerned about. **Seconded** by Member Ketel.
All Aye. Motion approved.

6. Public Hearing - LandCare Associates Inc., 282 and 284 Knox Marsh Road (Tax Map 9, Lots 3 and 4)

– Attorney Kevin Baum, Representative

Chair Goodnow opened the hearing as a continuation from February 16th 2022.

Attorney Kevin Baum handed out updated, color coded site plans. He noted that the engineer and owner couldn't make it. Mr. Baum would like to determine what relief is needed so that they can determine what issues they may need to bring to the zoning board.

Vice Chair Goodnow gave the board 5 minutes to read the new Conservation Commission and Water Board memos. Mr. Baum noted that there are 3 issues he would like to have cleared up. He would like to know if the proposed stormwater impoundments are permitted with a CUP, if bins are considered

structures needing a CUP or Variance, and is a variance needed for a gravel driveway.

Mr. Baum noted that he feels the proposed impoundments are permitted since impoundments are not defined in our ordinance. Therefore relief should not be needed. Member Ketel asked which case law Mr. Baum was referencing when claiming other ordinances with undefined impoundments. Mr. Baum said he will submit a memorandum with the cases. Planner Durfee noted that we have been getting updates and memos since November and the board has come to some determinations on these presented issues.

Vice Chair Goodnow noted that the board was expecting to see new details on how the site plan would be moving toward compliance.

Mr. Baum reiterated that he is looking for whether the proposed stormwater impoundments are permitted so that he knows if he needs a variance. Member Avery noted the setback buffers and the overlay districts each have their own set of guidelines.

Eric Fiegenbaum, speaking as a member of the Water Board and Conservation Commission, noted that the type of impoundment, not just if it is an impoundment matters. For example a sludge pond water impoundment is not what is desired here and the vagueness of the ordinance is helpful in this case. He added that if you look at the whole ordinance it doesn't lean toward stormwater management as an approved impoundment in the overlay districts. Lastly, he noted that the floodplain takes up the greatest amount of area on the site plan and is the most restrictive ordinance.

Mr. Baum noted that although there could have been intent when the ordinance was written it's not possible to derive intent from it. The board should interpret the ordinance as written. This is why we look to common meaning and the floodplain ordinance is the closest thing to a definition.

Member Jordan noted that as the ordinance states, there is no construction permitted in this area so a stormwater impoundment could not be created. He also noted that Landcare has already moved soil where it was prohibited and should be doing no more than what is necessary. He also reminded Mr. Baum that he can apply for a CUP, but the board has already noted that a variance was what we suggested to Mr. Berry.

Planner Durfee asked the board to look at each overlay district separately and draw conclusions based on what the purpose statement is trying to convey. She also noted that we will have to go through the final plan with a fine tooth comb once the plan is completely solidified to find if there are more variances or CUPs needed.

Planner Durfee added that if stormwater impoundment is considered an impoundment it still must not have negative effects. If the 25ft. area of no disturbance is impacted, a variance would be needed. Member Jordan added that since you will need to construct the stormwater impoundment in the shoreline and hazard area, where land filing and dredging is prohibited, a variance would be needed as well.

Member Hoff asked the board what role does our interpretation in the past play. Do previous decisions matter? He added that a 3rd party review of this stormwater management plan and its impact may negate or support the purpose statement. Member Hoff noted that the CUP for an 8' walkway should be a non-starter. He added there is no reason to put this down the middle of a wetland.

Planner Durfee noted that how the town has dealt with stormwater management in the past should be considered.

Member Hoff also reminded Mr. Baum that neither lot is approved for retail and the second lot is approved for office use only. He also stated that the application should clearly state what operations are planned and how they differentiate from the original approved site plans. He added that the applicant should clearly state that they require relief from the last site plan.

Member Avery noted that Mr. Baum's issues have been answered before and that Mr. Berry was told during the last meeting that his CUP applications should be variances except for the 15% non-impervious are CUP. Mr. Baum agreed with the 15% CUP.

Member Avery then listed items he asked for from Landcare during his tenure as Chair. These include (1) a memo authorizing Mr. Baum to represent LandCare, (2) a legal explanation of how two lots with two different owner's works with one site plan for a business with yet a different owner, (3) details of the proposed retail operations (e.g., traffic percentage, hours, etc.), (4) if any spaces in the LandCare facility will be rented or used by businesses other than LandCare itself, and (5) how do setbacks along the property line between the two lots work across one site plan. Member Avery added that the Board would like to see information on DOT driveway approval.

Planner Durfee noted that if the board was to approve a site plan as two lots, the site plan would be applicable to both lots, not one or the other.

Member Goodnow asked what other towns have been doing to address this water impoundment issue. Planner Durfee reminded us that we need to focus on our regulations for the applicant but she has looked at NH DES for guidance.

Member Burbank asked at what time do we get to know more about the size and design of the stormwater management? Mr. Baum said that he will try to come back with more information.

Member Avery said that he had discussed asking Mr. Ballestero if he would be interested in doing the 3rd party stormwater review for this site plan with the Town. Planner Durfee noted that the board should consider what questions they would like answered from the review and what potential impacts from the review. The board agreed to ask Mr. Ballestero to do the review.

Motion made my Member Avery that the board would like a 3rd party review of the stormwater management of the proposed site plan. **Seconded** by member Jordan. All Aye. **Motion passed.**

Motion made by Member Hoff to continue the public hearing to Wednesday April 20th at 7pm. **Seconded**

by Vice Chair Goodnow. All Aye. **Motion approved.**

7. Other New Business

None

8. Other Old Business

Planner Durfee asked the board to review the application for SRPC review of our flood plain standards. She asked if the Water Board or Conservation Commission would be interested in participating. With the board's approval, she will be looking for a signed letter of commitment from the selectmen. The board agreed.

9. Election of Officers

Motion made by Member Avery that Marcia Goodnow will be the Chairman, Member Hoff will be the Vice Chair, and Member Card will be the Secretary. **Seconded** by member Burbank. **All Aye. Motion approved.**

Meeting Adjourned at 9:30

Meeting Attendees:

Charles Goss, Cherry Lane
Beth Goss, Cherry Lane
Kevin Baum, Land Care Attorney
Joseph Moriarty, Road Agent
Peggy Wolcott, Old Stage Road
Robert Berner, Eversource
Tery Cooper
Justin Corrow, Building Inspector

Respectfully submitted by Michael Card